

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

THOMAS RAY WOODSON, No. C 07-04925 CW (PR)
Plaintiff, ORDER OF SERVICE
v.
J. RODRIGUEZ, et al.,
Defendants.

Plaintiff Thomas Ray Woods, a state prisoner, has filed the present pro se civil rights action pursuant to 42 U.S.C. § 1983 alleging a constitutional rights violation while incarcerated at Salinas Valley State Prison (SVSP). His motion for leave to proceed in forma pauperis (IFP) has been granted. Venue is proper in this district because the events giving rise to the action occurred at SVSP, which is located in this district. See 28 U.S.C. § 1371(b).

BACKGROUND

Plaintiff alleges that Defendants SVSP Sergeant Kircher and SVSP Correctional Officers J. Rodriguez, E. Camarena, J. Parra and D. Vega used excessive physical force in violation of the Eighth Amendment. Specifically, Plaintiff claims that at around 1:00 p.m. on March 23, 2006, a mass cell search occurred because a sheet pan was missing from the kitchen. Defendants Rodriguez, Camarena and Parra approached Plaintiff's cell during the search, ordered Plaintiff to put his hands through the food port in order to place handcuffs on him, and handcuffed him for cell removal. Afterwards, Defendants Rodriguez and Camarena "thrash[ed] Plaintiff's cell" while Defendant Parra detained Plaintiff against the wall outside of his cell. Plaintiff then attempted to inform Defendant Kircher

1 "about the harrassment [sic] he was going through under the guise
2 of a cell search." (Compl. at 4.) Plaintiff slightly turned his
3 head to convey his message and stated, "I need to speak with you
4 Sergeant, I am being harassed." (Id.) When Plaintiff received no
5 response, he asked Defendant Kircher if he was "condoning this
6 harrassment [sic]." (Id.) Defendant Kircher ignored Plaintiff and
7 ordered Defendants Parra and Vega to remove Plaintiff from the
8 area. As Defendants Parra and Vega removed Plaintiff, Plaintiff
9 asked Defendant Kircher again if he was "sanctioning this
10 harrassment [sic]." Defendant Kircher then ordered Defendants
11 Parra and Vega "to take Plaintiff down." (Id.) Defendant Parra
12 kicked Plaintiff's feet out from under him causing him to fall face
13 first onto the pavement and to suffer from a swollen right eye.
14 While Plaintiff was on the ground, Defendant Parra "used further
15 unnecessary brut force by bending Plaintiffs [sic] cuffed right
16 wrist and arm up towards Plaintiff's head causing excruciating pain
17 to Plaintiffs [sic] wrist and shoulder joints." (Id.) Defendant
18 Vega "dropped his knee with [his] full body weight [on] Plaintiffs
19 [sic] neck and upper back, laughing and giggling at Plaintiff's
20 squeels [sic] of pain." (Id.) In response to the commotion,
21 Defendants Camarena and Rodriguez along with "several other
22 unidentified guards" approached Plaintiff while he was on the floor
23 and began kicking Plaintiff in the legs and hips.

24 After shackling Plaintiff's legs, Defendants Parra and Vega
25 forced Plaintiff to stand up and walk with his boxers down exposing
26 his genitalia. Plaintiff was then taken outside where Defendants
27 Parra and Vega threw him to the ground again damaging his knees,
28 dislocating his shoulder, and scraping the skin off of his swollen

1 right eye. Plaintiff told Defendant Kircher that his shoulder was
2 dislocated. Defendant Kircher instructed Defendants Camarena and
3 Rodriguez to take over as Plaintiff's escorts. Defendant Kircher
4 later ordered them to check Plaintiff's handcuffs and to put him
5 down. After his handcuffs were checked, Plaintiff was yanked to
6 his feet by Defendants Rodriguez and Camarena and again "thrown" to
7 the cement pavement, which caused his shoulder to "pop[] back into
8 [its] socket." (Id. at 5.)

9 Subsequently, Plaintiff was placed in a standing room only
10 holding cell. While in the cell, he asked for a doctor to treat
11 his dislocated shoulder and for pictures to be taken of his
12 injuries, but Nurse Moore denied Plaintiff's request. After some
13 time had passed, Doctor Sue arrived and found several injuries on
14 Plaintiff's body after conducting a visual examination. As a
15 result, Doctor Sue ordered Nurse Moore to document Plaintiff's
16 injuries on a CDC Form 7219. Plaintiff was escorted back to the
17 general population at approximately 4:15 p.m.

18 Plaintiff filed several 602 inmate appeals, but he claims they
19 were screened out. After filing more 602 appeals, Plaintiff claims
20 that he received a retaliatory CDC 115 write-up on April 5, 2006.

21 Plaintiff alleges he eventually exhausted his administrative
22 remedies with respect to these claims. He seeks monetary
23 compensation and injunctive relief for his physical and emotional
24 injuries.

25 DISCUSSION

26 I. Standard of Review

27 A federal court must conduct a preliminary screening in any
28 case in which a prisoner seeks redress from a governmental entity

1 or officer or employee of a governmental entity. See 28 U.S.C.
2 § 1915A(a). It its review, the court must identify cognizable
3 claims and dismiss any claims that are frivolous, malicious, fail
4 to state a claim upon which relief may be granted or seek monetary
5 relief from a defendant who is immune from such relief. See id.
6 § 1915A(b)(1),(2). Pro se pleadings must, however, be liberally
7 construed. See Balistreri v. Pacifica Police Dep't, 901 F.2d 696,
8 699 (9th Cir. 1988). To state a claim under 42 U.S.C. § 1983, a
9 plaintiff must allege two essential elements: (1) that a right
10 secured by the Constitution or laws of the United States was
11 violated, and (2) that the alleged violation was committed by a
12 person acting under the color of state law. See West v. Atkins,
13 487 U.S. 42, 48 (1988).

14 A supervisor may be liable under § 1983 upon a showing of
15 personal involvement in the constitutional deprivation or a
16 sufficient causal connection between the supervisor's wrongful
17 conduct and the constitutional violation. Redman v. County of San
18 Diego, 942 F.2d 1435, 1446 (9th Cir. 1991) (en banc) (citation
19 omitted). A supervisor therefore generally "is only liable for
20 constitutional violations of his subordinates if the supervisor
21 participated in or directed the violations, or knew of the
22 violations and failed to act to prevent them." Taylor v. List, 880
23 F.2d 1040, 1045 (9th Cir. 1989). This includes evidence that a
24 supervisor implemented "a policy so deficient that the policy
25 itself is a repudiation of constitutional rights and is the moving
26 force of the constitutional violation." Redman, 942 F.2d at 1446;
27 see Jeffers v. Gomez, 267 F.3d 895, 917 (9th Cir. 2001).

1 II. Plaintiff's Claims

2 A. Use of Excessive Force

3 A prisoner has the right to be free from cruel and unusual
4 punishment, including physical abuse by guards. Whenever prison
5 officials stand accused of using excessive physical force in
6 violation of the Eighth Amendment, the core judicial inquiry is
7 whether force was applied in a good-faith effort to maintain or
8 restore discipline, or maliciously and sadistically to cause harm.
9 Hudson v. McMillian, 503 U.S. 1, 6 (1992) (citing Whitley v.
10 Albers, 475 U.S. 312, 317 (1986)).

11 Based on the allegations motioned above, the Court is unable
12 to say that Plaintiff can prove no set of facts which would entitle
13 him to relief in support of his claim of the malicious and sadistic
14 use of force. Accordingly, the Court finds this claim cognizable.

15 B. Retaliation

16 "Within the prison context, a viable claim of First Amendment
17 retaliation entails five basic elements: (1) An assertion that a
18 state actor took some adverse action against an inmate (2) because
19 of (3) that prisoner's protected conduct, and that such action
20 (4) chilled the inmate's exercise of his First Amendment rights,
21 and (5) the action did not reasonably advance a legitimate
22 correctional goal." Rhodes v. Robinson, 408 F.3d 559, 567-68 (9th
23 Cir. 2005) (footnote omitted). To prove retaliation, a plaintiff
24 must show that the defendants took adverse action against him or
25 her that "would chill or silence a person of ordinary firmness from
26 future First Amendment activities." White v. Lee, 227 F.3d 1214,
27 1228 (9th Cir. 2000) (citing Mendocino Env'tl. Ctr. v. Mendocino

1 County, 192 F.3d 1283, 1300 (9th Cir. 1999)).

2 First, Plaintiff alleges that Defendants retaliated against
3 him for filing inmate grievances. Specifically, Plaintiff argues
4 that a retaliatory motive can be inferred against Defendants
5 because after he filed inmate grievances relating to the alleged
6 excessive force incident, he was "denied timely and adequate
7 medical treatment for his injuries sustained on March 23, 2006"¹
8 and also "denied a mattress to sleep on for over a month and a
9 half." (Compl. at 8.) Even if Plaintiff experienced delays in
10 care that he attributed to Defendants, these delays would not
11 dissuade a person of reasonable firmness from exercising his or her
12 right to free speech by filing inmate grievances. Consequently,
13 Plaintiff fails to state a cognizable claim.

14 Plaintiff also claims that his transfer from SVSP to HDSP was
15 the result of retaliation by Defendants for Plaintiff's filing
16 inmate grievances. (Compl. at 9.) Although prison officials are
17 invested with broad discretion to handle transfers of prisoners,
18 they may not retaliate against inmates for the exercise of their
19 First Amendment rights. However, a retaliation claim is not stated
20 where the prisoner does not allege that the defendants' actions
21 caused him some injury, Resnick v. Hayes, 213 F.3d 443, 449 (9th
22 Cir. 2000), or, in the case of alleged retaliatory transfer, if
23 the decision may be upheld on a constitutionally valid basis, Sher
24 v. Coughlin, 739 F.2d 77, 82 (2d Cir. 1984).

25
26 ¹ Plaintiff does not allege a claim of deliberate indifference
27 to his medical needs stemming from the March 23, 2006 incident. Nor
28 does he allege that he has exhausted such a claim through the prison
administrative appeals process.

1 Here, Plaintiff alleges that after he filed inmate grievances,
2 he was transferred to a prison "500 miles away from his home,
3 family and loved ones." (Compl. at 9.) However, his allegation
4 that the transfer occurred after the grievances were filed does
5 not, without more, establish retaliation; rather, Plaintiff must
6 allege a nexus between the two. See Huskey v. City of San Jose,
7 204 F.3d 893, 899 (9th Cir. 2000) (retaliation claim cannot rest on
8 the logical fallacy of post hoc, ergo propter hoc, i.e., "after
9 this, therefore because of this"). Here, Plaintiff does not allege
10 any nexus between his grievances and the transfer. While Plaintiff
11 claims that prison officials transferred him to HDSP without a
12 legitimate administrative purpose, there is no indication that
13 prison officials would not have transferred Plaintiff even if he
14 had not filed the inmate grievances. See Sher, 739 F.2d at 82 (no
15 retaliatory transfer claim stated where administrative reasons
16 relied on by defendants would have caused them to transfer prisoner
17 whether or not they also entertained thoughts of retaliation).
18 Accordingly, Plaintiff's retaliation claim based on retaliatory
19 transfer to HDSP is DISMISSED with leave to amend. He may file an
20 amendment to the complaint to allege that the transfer was in
21 retaliation for the exercise of his constitutional rights. In his
22 amendment to the complaint, Plaintiff must also link specific
23 Defendants to his claim by explaining what that Defendant did that
24 caused a violation of Plaintiff's constitutional rights. Leer v.
25 Murphy, 844 F.2d 628, 634 (9th Cir. 1988) (liability may be imposed
26 on an individual defendant under section 1983 if the plaintiff can
27 show that the defendant proximately caused the deprivation of a
28 federally protected right).

1 III. Defendants

2 A. Named Defendants

3 Plaintiff has named and directly linked to his allegations of
4 excessive force the following named Defendants: SVSP Sergeant
5 Kircher as well as SVSP Correctional Officers J. Rodriguez, E.
6 Camarena, J. Parra and D. Vega. Accordingly, the Court will order
7 service of the complaint on these Defendants.

8 B. Doe Defendants

9 Plaintiff identifies "several other unidentified guards" or
10 Doe Defendants whose names he intends to learn through discovery.
11 The use of Doe Defendants is not favored in the Ninth Circuit. See
12 Gillespie v. Civiletti, 629 F.2d 637, 642 (9th Cir. 1980).
13 However, where the identity of alleged defendants cannot be known
14 prior to the filing of a complaint the plaintiff should be given an
15 opportunity through discovery to identify them. Id. Failure to
16 afford the plaintiff such an opportunity is error. See Wakefield
17 v. Thompson, 177 F.3d 1160, 1163 (9th Cir. 1999). Accordingly, the
18 claims against the Doe Defendants are DISMISSED. Should Plaintiff
19 learn the identities of additional persons who violated his rights,
20 he may move to file an amended complaint to add them as named
21 defendants. See Brass v. County of Los Angeles, 328 F.3d 1192,
22 1195-98 (9th Cir. 2003).

23 CONCLUSION

24 For the foregoing reasons, the Court orders as follows:

25 1. Plaintiff has adequately alleged a cognizable Eighth
26 Amendment claim against Defendants Kircher, Rodriguez, Camarena,
27 Parra and Vega.

1 2. Plaintiff's retaliation claim based on retaliatory
2 transfer to HDSP is DISMISSED WITH LEAVE TO AMEND as indicated
3 above. Within thirty (30) days of the date of this Order Plaintiff
4 may file an amended retaliation claim (Plaintiff shall resubmit
5 only that claim and not the entire complaint) as set forth above in
6 Section II(B) of this Order. He must clearly label the document an
7 "Amendment to the Complaint," and write in the case number for this
8 action. The failure to do so within the thirty-day deadline will
9 result in the dismissal of Plaintiff's retaliation claim based on
10 retaliatory transfer to HDSP.

11 His remaining retaliation claim based on delays in care is
12 DISMISSED WITH PREJUDICE.

13 3. The claims against the Doe Defendants are DISMISSED
14 WITHOUT PREJUDICE.

15 4. The Clerk of the Court shall mail a Notice of Lawsuit and
16 Request for Waiver of Service of Summons, two copies of the Waiver
17 of Service of Summons, a copy of the complaint and all attachments
18 thereto (docket no. 1) and a copy of this Order to SVSP Sergeant
19 Kircher and SVSP Correctional Officers J. Rodriguez, E. Camarena,
20 J. Parra and D. Vega. The Clerk of the Court shall also mail a
21 copy of the complaint and a copy of this Order to the State
22 Attorney General's Office in San Francisco. Additionally, the
23 Clerk shall mail a copy of this Order to Plaintiff.

24 5. Defendants are cautioned that Rule 4 of the Federal Rules
25 of Civil Procedure requires them to cooperate in saving unnecessary
26 costs of service of the summons and complaint. Pursuant to Rule 4,
27 if Defendants, after being notified of this action and asked by the
28

1 Court, on behalf of Plaintiff, to waive service of the summons,
2 fail to do so, they will be required to bear the cost of such
3 service unless good cause be shown for their failure to sign and
4 return the waiver form. If service is waived, this action will
5 proceed as if Defendants had been served on the date that the
6 waiver is filed, except that pursuant to Rule 12(a)(1)(B),
7 Defendants will not be required to serve and file an answer before
8 sixty (60) days from the date on which the request for waiver was
9 sent. (This allows a longer time to respond than would be required
10 if formal service of summons is necessary.) Defendants are asked
11 to read the statement set forth at the foot of the waiver form that
12 more completely describes the duties of the parties with regard to
13 waiver of service of the summons. If service is waived after the
14 date provided in the Notice but before Defendants have been
15 personally served, the Answer shall be due sixty (60) days from the
16 date on which the request for waiver was sent or twenty (20) days
17 from the date the waiver form is filed, whichever is later.

18 6. Defendants shall answer the complaint in accordance with
19 the Federal Rules of Civil Procedure. The following briefing
20 schedule shall govern dispositive motions in this action:

21 a. No later than ninety (90) days from the date their
22 answer is due, Defendants shall file a motion for summary judgment
23 or other dispositive motion. The motion shall be supported by
24 adequate factual documentation and shall conform in all respects to
25 Federal Rule of Civil Procedure 56. If Defendants are of the
26 opinion that this case cannot be resolved by summary judgment, they
27 shall so inform the Court prior to the date the summary judgment
28

1 motion is due. All papers filed with the Court shall be promptly
2 served on Plaintiff.

3 b. Plaintiff's opposition to the dispositive motion
4 shall be filed with the Court and served on Defendants no later
5 than sixty (60) days after the date on which Defendants' motion is
6 filed. The Ninth Circuit has held that the following notice should
7 be given to pro se plaintiffs facing a summary judgment motion:

8 The defendants have made a motion for summary
9 judgment by which they seek to have your case dismissed.
10 A motion for summary judgment under Rule 56 of the
Federal Rules of Civil Procedure will, if granted, end
your case.

11 Rule 56 tells you what you must do in order to
12 oppose a motion for summary judgment. Generally, summary
13 judgment must be granted when there is no genuine issue
14 of material fact -- that is, if there is no real dispute
about any fact that would affect the result of your case,
15 the party who asked for summary judgment is entitled to
16 judgment as a matter of law, which will end your case.
When a party you are suing makes a motion for summary
17 judgment that is properly supported by declarations (or
18 other sworn testimony), you cannot simply rely on what
19 your complaint says. Instead, you must set out specific
20 facts in declarations, depositions, answers to
interrogatories, or authenticated documents, as provided
21 in Rule 56(e), that contradict the facts shown in the
defendant's declarations and documents and show that
there is a genuine issue of material fact for trial. If
you do not submit your own evidence in opposition,
summary judgment, if appropriate, may be entered against
you. If summary judgment is granted [in favor of the
defendants], your case will be dismissed and there will
be no trial.

22 See Rand v. Rowland, 154 F.3d 952, 962-63 (9th Cir. 1998) (en
23 banc).

24 Plaintiff is advised to read Rule 56 of the Federal Rules of
25 Civil Procedure and Celotex Corp. v. Catrett, 477 U.S. 317 (1986)
26 (party opposing summary judgment must come forward with evidence
27 showing triable issues of material fact on every essential element
28

1 of his claim). Plaintiff is cautioned that because he bears the
2 burden of proving his allegations in this case, he must be prepared
3 to produce evidence in support of those allegations when he files
4 his opposition to Defendants' dispositive motion. Such evidence
5 may include sworn declarations from himself and other witnesses to
6 the incident, and copies of documents authenticated by sworn
7 declaration. Plaintiff will not be able to avoid summary judgment
8 simply by repeating the allegations of his complaint.

9 c. If Defendants wish to file a reply brief, they shall
10 do so no later than thirty (30) days after the date Plaintiff's
11 opposition is filed.

12 d. The motion shall be deemed submitted as of the date
13 the reply brief is due. No hearing will be held on the motion
14 unless the Court so orders at a later date.

15 7. Discovery may be taken in this action in accordance with
16 the Federal Rules of Civil Procedure. Leave of the Court pursuant
17 to Rule 30(a)(2) is hereby granted to Defendants to depose
18 Plaintiff and any other necessary witnesses confined in prison.

19 8. All communications by Plaintiff with the Court must be
20 served on Defendants, or Defendants' counsel once counsel has been
21 designated, by mailing a true copy of the document to Defendants or
22 Defendants' counsel.

23 9. It is Plaintiff's responsibility to prosecute this case.
24 Plaintiff must keep the Court informed of any change of address and
25 must comply with the Court's orders in a timely fashion

26 10. Extensions of time are not favored, though reasonable
27 extensions will be granted. Any motion for an extension of time
28

1 must be filed no later than fifteen (15) days prior to the deadline
2 sought to be extended.

3 IT IS SO ORDERED.

4 DATED: 5/21/08



5 CLAUDIA WILKEN
6 United States District Judge
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

THOMAS RAY WOODSON,

Plaintiff,

v.

J. RODRIGUEZ et al,

Defendant.

Case Number: CV07-04925 CW

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on May 21, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Thomas Ray Woodson
P-76095
"C" Facility, Calipatria State Prison
P.O. Box 5001
Calipatria, CA 92253

Dated: May 21, 2008

Richard W. Wiekling, Clerk
By: Sheilah Cahill, Deputy Clerk

United States District Court
For the Northern District of California